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EXTRAORDINARY

PART II—Section 3

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No. 316] NEW DELHI, THURSDAY, DECEMBER 17, 1953

ELECTION COMMISSION, INDIA

NOTIFICATION

New Delhi, the 5th December 1953

S.R.O. 2276.—Whereas the election of Shri Girdhari Lal Salwan, as a member of the Legislative Assembly of the State of Delhi, from the Jhandewalan constituency of that Assembly, has been called in question by an Election Petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri Bachittar Singh, son of Bawa Dasaunda Singh, No. 6, Halley Road, New Delhi;

And whereas the Election Tribunal appointed by the Election Commission in pursuance of the provisions of Section 86 of the said Act for the trial of the said Election Petition has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its Order to the Commission;

Now, therefore, in pursuance of the provisions of Section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

BEFORE THE ELECTION TRIBUNAL, DELHI

Bachittar Singh—*Petitioner.*

Versus

1. Girdhari Lal Salwan.
2. Shri Badri Nath.
3. Shri Inder Parkash.
4. S. Kartar Singh.
5. Shri Jai Pal.
6. S. Lachhman Singh.
7. S. Harbhajan Singh.
8. Shri Ram Labhaya.
9. Shri Surrender Nath.
10. S. Raghbir Singh—*Respondents.*

ORDER

In a straight contest for election to the Delhi State Legislative Assembly from the Jhandewalan constituency, respondent No. 1 Shri G. L. Salwan, an Independent Candidate, won the seat by a majority of 209 votes. The defeated candidate Bawa Bachittar Singh, who had contested the election on Congress Ticket, has filed the present petition to have the election set aside on various grounds. He alleges that respondent No. 1, on the date of election, viz. 14th of January, 1952 and several days prior to it had by himself and through his agents been carrying on malicious and false propaganda that the petitioner had been endeavouring to secure votes

in his favour in the said election on payment of money and that in this connection he had issued posters and exhibited big paintings and advertisements headed '*Chandi ka joota*', making wild and totally false insinuations and allegations against the petitioner. The petitioner further alleges that respondent No. 1 and with his connivance his agents directly interfered with the free exercise of the electoral right of the voters in this constituency by instigating crowds not to allow the voters to enter the polling stations if these voters appeared to be supporters of the petitioner. The respondent and his agents are also alleged to have spread false and baseless rumours in the constituency on the 14th of January that the petitioner had been arrested and later that he had been killed by an angry mob and to have urged that it was no use in the circumstances voting for the petitioner. It is further alleged that scores of persons had at the instance of the respondent and his workers obtained ballot papers in the names of persons who were either dead or were not in Delhi on the 14th January, 1952. Respondent No. 1 is also alleged to have used two motor vehicles of a polling agent of his for bringing voters to some of the polling booths and to have also held public meetings within the constituency on the same day. He is also alleged to have taken out processions carrying, on a bamboo pole, a shoe covered with white lead leaves. Respondent No. 1 is further alleged to have disturbed certain election meetings arranged by the petitioner prior to the 14th of January. There are also allegations about distribution of liquor to the voters and of bribery on a large scale. The return of election expenses filed by the respondent is said to be false, and he is alleged to have spent much more on the election than the maximum permitted under the Rules. Finally, the petitioner has contended that but for the votes obtained by the respondent by corrupt and illegal practices, the petitioner would have obtained a majority of votes and he has consequently claimed that he be declared to have been duly elected.

Respondent No. 1 in his written statement has denied all the allegations regarding undue influence, bribery, use of vehicles etc. made in the petition. He has also denied having exhibited any painting, poster or advertisement of the nature alleged in the petition or to have spread any rumour about the petitioner's arrest or death. The respondent contends that the petitioner is in no case entitled to the declaration that he had been duly elected.

The other respondents, who were all duly nominated candidates, but who had not contested the election have not taken any part in these proceedings.

The following are the issues in the case:—

1. Did respondent No. 1 on 6th January, 1952, 12th January, 1952, 13th January, 1952, and 14th January 1952, by himself and through his agents make and publish statements suggesting that the petitioner was endeavouring to obtain votes in his favour on payment of money to the voters?
2. Were these statements of fact either false to the knowledge of the respondent or not believed by him to be true?
3. If the first two issues are decided in petitioner's favour, did the making of these particular statements amount to a corrupt practice within the meaning of Sub-Section (5) of Section 123 of the Representation of the People Act, 1951?
4. Did respondent No. 1 by himself and through his agents named in the list of particulars distribute liquor among the voters of the constituency for securing their votes on the dates 9th to 14th January, 1952, and if so, what is the effect?
5. Did respondent No. 1 by himself and through his agents named in the list of particulars distribute money to the voters in the constituency on 14th January, 1952 for the purpose of obtaining their votes, and what is the effect?
6. Did respondent No. 1. and with his connivance any of his agents, interfere with the free exercise of his vote by any of the voters mentioned in the list of particulars concerning paragraph 6 to 11 on 14th January, 1952?
7. Did respondent No. 1 and with his connivance his agents spread a rumour on 14th January 1952 that the petitioner had died or had been killed?
8. If so, was it a statement of fact in relation to the withdrawal of the petitioner's candidature and otherwise within the scope of Sub-Section (5) of Section 123 of the Act. What is the effect?

9. Were any votes cast in the names of persons, named in the list of particulars, who were either dead or not in Delhi, in favour of respondent No. 1, and at his instance or with his connivance or at the instance or the connivance of his agents?
10. Did respondent No. 1 use two motor vehicles as mentioned in the list of particulars for transporting voters from Lakar Mandi to Jhandewalan Temple, from Baghichi Allaudin to Datar High School, and from Mutiny Memorial Road to Nirankari Crafts School on the day of polling. What is the effect?
11. Did the respondent No. 1 and with his connivance his agents hold public meetings in the constituency on the day of polling, that is 14th January, 1952. What is the effect?
12. Did respondent No. 1, and with his connivance his agents disturb any election meetings of the petitioner on 29th December, 1951, 8th January, 1952, 9th January 1952 and 11th January, 1952. What is the effect?
13. Did respondent No. 1 incur expenses in connection with his election in excess of the limit of Rs. 2,000 fixed by the rules. What is the effect?
14. What relief is the petitioner entitled to?

There being either no evidence or the evidence produced being meagre or unsatisfactory issues No. 4 and 5, 9, 10, 11, 12 and 13 were not argued. The only issues which were pressed are issues No. 1 to 3 and 6 to 8.

Issue No. 1.—The petitioner has not led any evidence about exhibition of posters and advertisements with the heading '*Chandi ka joota*' mentioned in the petition and the case is confined to exhibition of a painting by the respondent of which Ex. P/A is said to be a near copy. This painting shows a portion of the body of a person with a white *khadi churidar pajama*, grey coloured warm *achkan*, and white socks with a white Punjabi shoe. Several coins and currency notes are shown lying near the shoe and the person in question is shown as offering the voters currency notes, coca cola bottles and crockery. A picture of a coca cola bottle and of a cup and saucer is also shown in the painting in question. On the other side of the painting is shown the picture of a person said to be respondent No. 1 as also of a voter spurning the offer of money etc. by the petitioner. According to the petitioner, the person shown in the picture offering money to the voters was meant to be no other than the petitioner and the idea in publishing the painting was to represent to the people that the petitioner was endeavouring to secure votes by payment of money. According to the case as presented at the trial, this painting had not only been taken out in procession on various dates throughout the constituency but six big boards with the painting in question had been exhibited at certain fixed places in the constituency for a week or so before the date of polling. In the case as originally set out in the petition and the list of particulars filed along with it, the case apparently was that a painting like Ex. P/A had merely been taken out in procession on several days. The list of particulars mentions the names of the localities through which the processions had passed, and the names of eleven persons, who according to the petitioner had along with others taken part in these processions. There is no mention in the petition or the list of particulars attached to it of the fact that the boards were also exhibited at several fixed places in the constituency. No particulars were given of the contents of the painting excepting that it was headed '*Chandi ka joota*' and that it contained false allegations and insinuations against the petitioner. The respondent consequently pleaded that the allegations in the petition in this particular respect were quite vague. The petitioner was required by an order of the Tribunal dated 7th October 1952 to file a list of better particulars. These were filed on the 22nd October, 1952 and along with it the petitioner filed the painting, Ex. P/A. The respondent contends that in the list of better particulars, the petitioner has set up an entirely new case not only in respect of the allegation that the boards had been exhibited at various fixed places in the constituency but also in respect of the contents of the painting. He accordingly urged that the Tribunal ignore the new case set up in the list of better particulars and confine its finding to the case as originally put forward in the petition and the original list of particulars. The respondent having allowed the list of better particulars to be placed on the record and having raised no objection at the appropriate stage to production of evidence in respect of the case as eventually set up, the Tribunal must consider the whole case although the evidence produced by the petitioner will have to be examined against the back ground of the allegations contained in the original list of particulars.

The petitioner has produced over thirty witnesses to prove his allegation about exhibition of the paintings at various places in the constituency and to the carrying thereof in procession. Of these P.Ws. 7, 8 and 9, who are Members of the Delhi

State Legislative Assembly and P.W. 11, who is Vice President of the Delhi Municipal Committee of which the petitioner is a Member, do not remember having seen any such painting. P.Ws. 1 and 2 the Magistrate on duty, had also not seen any such painting. P.Ws. 10, 12 to 19, 38, 42, 46, 49, 50, 52, 58, 60, 61, 101, 110, 111, 114, 117, 118, 131 and 132 support the case in varying degrees. Of these, P.Ws. 13, 14, 101 and 111 are the workers or the employees of the petitioner. P.Ws. 38, 42, 46, 49, 50, 52, 58, 60, 114, 117 and 118 are persons of little substance. Some of these are *khashtati* makers, others tonga drivers and some prepare hand bags and supply the same to the concerns of the petitioner or his relations. It would be unsafe to place any reliance on the testimony of witnesses of this type. P.Ws. 131 and 132 are tenants of the petitioner, but were reluctant to admit this fact. The only witnesses, whose statements require detailed examination are P.Ws. 10, 12, 15, 16, 17, 18, 19, 61 and 110. P.W. 10 is a fellow Municipal Commissioner. He had seen a board like Ex. P/A on the shop of a tea seller. He remembered only a few words out of those put into the mouth of the person with white shoe but could not say what other words were there. P.W. 12 is an omnibus witness, who had, *inter-alia*, deposed to having seen a board like Ex. P/A, fixed near chowk Multani Dhanda. On another occasion, the witness had seen a similar board over the shop of a tea seller. Reading between the lines of the statement of the witness, it would appear that he is on friendly terms with the petitioner, although he was reluctant to admit this fact. The witness has stated he had no talk with the petitioner on the subject and the petitioner would have the Tribunal believe that this witness along with many others had been cited on the off chance of being in a position to support the case of the petitioner. This appears to be extremely improbable. P.W. 15 is another Municipal Commissioner, who had seen a board like Ex. P/A fixed opposite the Mansarovar Hotel but who could not recollect what was written thereon. P.W. 16 had seen a board near Hari Masjid, Pahar Ganj. There was painted a white leg with a white *desti* shoe. There was something lying near the shoe but the witness did not quite make out what it was. The board that the witness had seen was according to the witness "not quite like Ex. P/A". P.W. 17, a contractor, had seen a board opposite Hari Masjid. A shoe was painted on that board but as the witness had not his spectacles with him at the time he could not make out what was written on the board. P.W. 18, a timber merchant, had also seen a board which contained a writing to the effect that votes would be obtained with the help of 'Chandi ka joota'. This board was fixed near the Multani Dhanda chowk. The witness had seen nothing else on that board excepting the writing about which he had deposed. P.W. 19, was Secretary of the Congress Committee of the area. His statement betrays his anxiety to support the petitioner's case in every possible respect. He was an out and out partisan. P.W. 61 is a retired Station Master. This witness had seen opposite the shop of one Ram Singh a board with a painting like Ex. P/A. The witness had no talk about this board with any person and he could not say how he had come to be sited as a witness. P.W. 110 is an Insurance Agent. He had also seen a board which was almost like Ex. P/A. One of these he had seen near the chowk Multani Dhanda and the other near the Imperial Cinema. This he had done ten or fifteen days before the election. The petitioner's case, however, is that the board was exhibited for the first time on 6th January, 1952. This witness has also stated that he had had no talk with the petitioner on the subject. As observed already it is extremely improbable that the petitioner should have cited witnesses like P.Ws. 12, 15, 61 and 110 simply because he believed that as residents in the locality they had most probably seen the alleged board and without at all making sure that the witnesses were in fact in a position to give evidence on the subject. His explanation is that soon after the election, Congress workers had made enquiries from the people of the locality and had taken down the names of the persons who had stated they were in a position to depose about the facts of the case. This explanation is in the nature of an after thought. No such question had been addressed to the witnesses in re-examination and it was at a late stage in the case that the importance of the line of cross-examination in this particular respect was realised and the above explanation was put forward. When a witness goes out of his way to create the impression that he is an independent witness by stating that he did not know how he had come to be cited as a witness, he does more harm to the case of the party who produces him than a witness who honestly admits having previously been sounded on the subject. In consideration of this fact and otherwise also we are not impressed by the statements of witnesses like P.Ws. 61, and 110, even though there is nothing on the surface to show that they are interested in or connected with the petitioner.

The most noticeable thing, however, about the above evidence is the hesitation of the witnesses to support the petitioner's case in its entirety so far as the contents of the alleged painting are concerned. One of them has said that the painting was not quite like Ex. P/A. Another had not seen any writing thereon, a third had merely noticed some writing on the right but none on the left side of

the picture, and a fourth could not depose about the contents of the board because he had not his spectacles with him. The only official witness S. Bhagat Singh (P.W. 6) who has deposed to have seen a poster on the 14th January also did not remember having seen on that poster what appears on the left side thereof.

In view of the vague and discrepant evidence about the contents of the painting the petitioner was closely examined as to how Ex. P/A had come to be prepared. The witness had replied that Ex. P/A had been prepared with the help of a note about the contents thereof handed over to him by Mr. Dutta, Secretary of the Ward Congress Committee. This note had been handed over by an employee of the petitioner to the painter who had prepared Ex. P/A and the note had ever since remained with the painter in question. The petitioner admitted that Mr. Dutta lives in Delhi and he had also been cited as a witness. Mr. Dutta was, however, not produced nor was the painter called with the note of Mr. Dutta. The petitioner has stated that he considered the evidence of Mr. Dutta as unnecessary in view of the large number of other witnesses available for this purpose. If the statement of the petitioner in respect of Mr. Dutta and the note prepared by him is correct, then on his own admission, the petitioner had withheld the best type of secondary evidence which he was in a position to produce in respect of the contents of the alleged painting. All the witnesses produced by him have spoken from memory about 12 months or more after they had last seen the alleged painting. Evidence in the shape of a note presumably taken at the spot by a responsible member of the Congress would have helped the petitioner to establish his case to an extent which the statements of a score of witnesses who have spoken from memory have not been able to do. It is obvious that Mr. Dutta was not prepared to support the case of the petitioner. Either the story about the preparation of a note by Mr. Dutta is a fib or the contents of the painting according to the note were wholly different from those of Ex. P/A.

The position, therefore, is like this: The petitioner makes no mention of the contents of the board in his petition or in the original list of particulars. He merely says that the painting was headed '*chandi ka foota*' which Ex. P/A is not. He comes forward with the detailed particulars six months after the date of the petition and after the respondent had disclosed his case and denied exhibiting any painting, thus obtaining an unfair advantage. He says Ex. P/A had been prepared with the help of a note prepared by one Mr. Dutta, but does not produce either Mr. Dutta or the note alleged to have been made over to the petitioner by the said gentleman. He produces a number of witnesses, who give discrepant evidence about the contents of the alleged painting. The discrepancies are so glaring that the learned counsel for the petitioner was forced to take up the position that all the boards were not alike and the board which one P.W. may have seen was perhaps different from the one that the others had. The allegation in the list of better particulars, however, is that all the boards were similar. In the circumstances, it was too much for the petitioner to ask that his allegation in respect of the contents of the alleged offensive painting being similar to Ex. P/A be held as established. Even if, it were assumed for the sake of argument that a painting showing a white *dessi* shoe with coins and currency notes lying near that shoe was exhibited by the respondent, this by itself would establish nothing. Assuming further that the respondent's picture was also shown in the same painting, one interpretation of the contents of the painting in question can be that the voters were being asked to make a choice between a very wealthy candidate and another with only a record of public service to his credit. It was not possible to infer an intention to defame the petitioner from the fact of an alleged painting merely depicting a part of the body with coins and currency notes lying near the shoe. It is of the utmost importance in a case of this character that the Tribunal should have before it, if possible, the very words used in the alleged offensive publication and also a faithful reproduction of the other important features of the document. A rather free paraphrase of the language used in the publication, the omission of a stop or of a sign of interrogation or exclamation, may make all the difference and before a party can ask an Election Court to unseat a returned candidate, he must satisfy the Court that he has not withheld any evidence oral or documentary which might have affected the judgment of the Court. If one takes out from the picture Ex. P/A the words put into the mouth of the person wearing the shoe as also the words put into the mouth of the voter, the picture becomes far less offensive if not entirely innocuous and it is about this portion of the contents of the alleged picture that the more responsible of the various witnesses produced by the petitioner make hesitating statements. If the Tribunal had not asked for a list of better particulars the petitioner's case would hardly have been able to proceed in this particular respect. In consideration, therefore, of what has been urged above and in particular of the fact that almost all the independent and respectable witnesses produced by the petitioner have deposed that they had not at all seen the painting in question, the only conclusion

possible is that the petitioner has failed to establish that a painting containing allegations or insinuations to the effect that the petitioner was endeavouring to bribe the voters had been published by the respondent and had either been exhibited by him by putting up boards at some conspicuous places in the constituency or by taking out the same in a procession, either on the 14th January or before that date.

We have still to consider the evidence with regard to the carrying of a shoe covered with white lead leaves. Ex. P/B is said to be a near copy of that shoe. The petitioner's case that this shoe was taken out in a procession on the 14th January only. Mr. Sharma, the Magistrate on duty had not seen any such shoe being carried on a pole. S. Bhagat Singh had seen a similar shoe being carried by some urchins, but he had not seen any procession. The other witnesses in this connection are P.Ws. 12, 19, 38, 52, and 60. We have already commented on the statements of P.Ws. 12 and 19. P.W. 38 is a *bharbhunjia*, P.Ws. 52 and 60, are a *tongawala* and a *halwai* respectively. Their statements are not entitled to any weight. In any case, here is no reliable evidence to show that the respondent or his agents were concerned in the exhibition of any such shoe.

The first issue must, therefore, be decided against the petitioner.

Issue No. 2.—In consideration of the finding on the first issue, it is not necessary to consider either this issue or the next at length. The statement of the respondent is that after reading a report of a speech made by the petitioner and published in the daily 'Partap' in its issue bearing date the 17th of December, 1951, and after hearing reports from his workers and contacting the voters in the constituency he had come to the conclusion a week or ten days before the date of polling that the petitioner was endeavouring to bribe the voters. The petitioner was not asked any direct question about the speech alleged to have been made by him on the 14th of December. The position taken up by the petitioner in arguments was that the report was tendentious if not false and had been published in an anti Congress paper at the instance of the respondent and with the help of a reporter in league with the respondent. The question, however, is not as to whether the report in question is accurate but as to whether a candidate who had read the report in question was not justified in concluding that the petitioner was endeavouring to bribe the voters, particularly when the petitioner had not taken any steps to contradict the report. A finding adverse to the respondent in this respect can only be given if the Tribunal agrees with the petitioner that the respondent himself was responsible for the tendentious report in question. We are unable to take this view on the evidence on the record, and the petitioner must consequently be held to have failed to establish that the allegation in the painting even if untrue was false to the knowledge of the respondent or that he did not believe the same to be true.

Issue No. 3.—If the findings on the first two issues had gone in favour of the petitioner, that on the third issue would also have gone in his favour. Ex. P/A, obviously contains a statement of fact relating to the personal character of the petitioner and the same is not only reasonably calculated to prejudice the prospects of the petitioner's election but in our view very much so calculated. This amongst other things is clear from the reply put into the mouth of the voter, who is reported to have stated that although he was poor and indigent, he could not stoop so low as to pick up currency notes placed on the shoe of the petitioner. The petitioner is shown as not merely endeavouring to bribe the voters but contemptuously requiring them to lick his shoes so to say. Such a picture could not but create bitter feelings against the petitioner and prejudice his prospects of election.

Issue No. 6.—The petitioner's case is that the respondent had made elaborate preparations for terrorising the workers and supporters of the petitioner, that at a number of polling stations determined efforts had been made by the respondent and his workers to interfere with the free exercise of their electoral right by the voters, and that on account of disorders that had followed polling had to be suspended for about an hour at one polling station and at another extra police had to be requisitioned to prevent acts of hooliganism at the instance of the respondent and his supporters. There is a glittering array of witnesses on the petitioner's side to establish the above allegations. These include the Chief Commissioner, the Deputy Commissioner, the A.D.M., the two Magistrates on duty, the Superintendent of Police and several other Police Officers. These statements however only convey an idea of the extent of the trouble and of the steps taken to restore order but are more or less silent on the question of the genesis of the trouble. When the statements of the above witnesses are considered along with the evidence regarding the origin of the trouble, it appears that disorders that had occurred at some of the polling stations were due either to faulty arrangements of the

authorities or to some improper or illegal move of the petitioner or his agents and that the same could not have been the result of any premeditated line of action worked out by the respondent and his agents and workers.

There were 16 polling stations in all in this constituency. There is no allegation of any illegal or improper conduct on the part of the respondent or his workers so far as polling stations Nos. 1 to 8 are concerned. The allegations relate particularly to stations Nos. 11 and 12 and to a lesser extent to stations Nos. 9, 10 and 16. There are general allegations regarding intimidation of voters at the *Lakar Mandi* Polling Stations Nos. 13, 14 and 15. Polling station No. 10 is also situated in the *Lakar Mandi* area.

I take up first the evidence relating to trouble at Polling Station No. 11. This polling station was located in a building occupied by the Sahyadri Insurance Company. The building is situated near a chowk at the junction of Sadar Bazar and Original Roads. Under normal conditions there is very considerable amount of traffic on all the four roads which meet near the building in question. One of these leads to Sadar Bazar, another to Karol Bagh, a third to New Delhi and the fourth to Ajmere Gate. The building has no compound. There is a pavement 27 feet wide in front of that part of the building which was used as polling station and there is a road 35 feet wide separating this pavement from the pavement on the opposite side of the road. Beyond this latter pavement are temporary or permanent structures. All traffic to and from Sadar Bazar had to cross this road. There is no suggestion that on the polling day traffic had been diverted from this part of the road. No arrangements had been made or were in fact possible to separate the voters from the spectators and workers so that all were mixed up with the crowd of passersby. It is not surprising, therefore, that there was lot of noise and confusion at the place. The voting, in the circumstances, was bound at times to be slow and the crowd including the voters to grow impatient. There was, it would appear, no trouble upto 9.30 or 10 A.M. At that hour, according to the respondent, the petitioner elbowed his way to where Polling Officer Ram Gopal (R.W. 38) was working and asked to be allowed to go to the room of the Presiding Officer. Ram Gopal stopped him from going inside as he had instructions not to allow anybody other than the voters to go in. The petitioner resented this attitude of the Polling Officer and after informing him that he was BAWA he insisted upon going inside. The witness, however, persisted in stopping the petitioner upon which the latter said that if the witness would not allow the petitioner to go in, he in turn would not allow the voters to enter the room. Thereafter, the petitioner is alleged to have placed himself at the head of the queue of voters and prevented them from going inside. Upon this there was an uproar and the crowd began to demand that the petitioner be not allowed to stay where he was and must not also be allowed to go inside when an agent of his was already there. The incident about the petitioner preventing the voters from going inside is denied by the petitioner but it appears that the respondent's version is substantially correct. In the first place there is the statement of the Chief Commissioner to the effect that the respondent had complained to him at about 10 A.M. when he had visited the polling station in question on 14th January 1952 that the petitioner had prevented the voters from going inside. There is also the statement of the polling officer Shri C. P. Sood (R.W. 43). This witness has differed in several respects from R.W. 38 about the state of affairs at this polling station but in this particular respect he has agreed with him and has stated that the crowd was demanding that the BAWA be prevented from standing in front of the queue of voters and that he be not allowed to go inside. It is also clear from the statements of both the Chief Commissioner and the Deputy Commissioner that a point had been raised before them that a candidate was not entitled to go inside the polling station when an agent of his was already there. The trouble at that particular hour had thus started with the above mentioned incident and according to P.W. 1 the Magistrate on duty, order was restored within a few minutes. There was no trouble thereafter till about 3 or 4 P.M. when due to another incident near polling station No. 9, a big crowd of several thousands passed in front of this polling station on its way to Pahar Ganj Police Station which is closeby. This latter incident will be referred to in its proper place, but so far as the morning incident is concerned, there is nothing in the statements of the official witnesses to suggest that there was any interference by respondent No. 1 or his workers with the exercise of their electoral right by the voters. The crowd had no doubt been described by the Presiding Officer in his report as 'unruly' and P.W. 41 had deposed that the crowd was getting 'violent and furious' and that at one time the Officer had felt unsafe. Nevertheless, nothing untoward had happened and not a flower pot, so to say, appears to have been broken. There was merely noise and confusion and this had occasioned some difficulty to the voters in the matter of proceeding towards the polling booth. The crowd was perhaps not justified in taking such vehement objection to the presence of the

petitioner inside the polling station or to his obstructing the voters from proceeding towards the polling booth, but this ungracious conduct does not in law amount to interference with the election. Due allowance must be made for excitement, natural to such occasions. Out of the total of 1052 voters, who were entitled to vote at this station, as many as 752 had actually voted giving a percentage of about 71 as against the percentage for the whole constituency of 62.13. A number of blind and disabled persons had also been able to cast their votes. This could hardly have so happened if there had been any interference direct or indirect with the free exercise of their electoral right by the voters.

In coming to the above conclusion, we have not taken into account the statements of the non-official witnesses. The principal witness is P.W. 20, an active worker of the petitioner. His statement is that he had gone to cast his vote at about 3 P.M. when due to large crowds he had been unable to do so. The witness had tried again at 4-30 P.M. but he had been unsuccessful this time as well. On this occasion he had been surrounded by one of the workers of the respondent and 50 others. These persons had canes in their hands and had threatened the witness, who in order to save his life had left the place. The witness had tried a third time at 5-30 P.M. but had again been unsuccessful. The witness would not admit that he was an active supporter of the petitioner till his attention was drawn to the petition, in which he is so mentioned. The witness admitted that he had been going about the various polling stations on the election day in order to get into touch with the workers and supporters of the petitioner. Apart, therefore, from the fact that the witness is a partisan, his own statement shows that he was busy elsewhere and it was probably for that reason that he had been unable to vote and not because of threats by the workers and agents of the respondent. Moreover, this story is not supported by any other evidence.

The other witnesses on this point are P.Ws. 19, 34 and 100. P.W. 19 was Secretary of the Congress Committee of the constituency in question. His statement has already been discussed under the first issue. P.W. 34, a labourer, has merely deposed that he could not vote due to disturbances. He has not mentioned any particular act of violence or intimidation committed by the respondent or any of his workers or supporters. P.W. 100, Shinghara Singh, had gone to the polling station and after finding somebody pushing people in front of the witness, had got frightened and left the place. He had tried a second time but due to huge crowds had not been able to find his way to the polling booth. In this case also (assuming the statement to be otherwise genuine) the inability to vote was due to the presence of large crowds and not to any particular act of the respondent or his workers. The petitioner laid great stress on the statement of R.W. 38, according to whom there were about 150 people in the queue at 5.30 P.M. when issue of further chits was stopped and urged that the above fact showed in an unmistakable manner that a good many voters had been unable to cast their votes due to manipulation of the situation by the respondent's workers. The statement of this witness is in this particular respect not quite consistent with that of the Polling Officer, P.W. 41, according to whom there was never any occasion throughout the day, when any difficulty was experienced in coping with the voters. It is possible that some voters had not been able to cast their votes even though present in the vicinity of the polling station at 5.30 P.M. but this was apparently due to the incident at polling station No. 9 to which a passing reference has been made already. This incident must now be considered at some length.

Outside polling station No. 9 in one of the quarters known as *Bavan* quarters, P.W. 101 Dr. Jagan Nath, a worker of the petitioner, is alleged to have been seen distributing currency notes to the voters. On the matter being brought to the notice of R. W. 36, the latter proceeded towards the quarter in question. Later R.W. 36 is alleged to have recovered bundles of currency notes from the pocket of the said Jagan Nath. After some struggle with another supporter of the petitioner, the currency notes were handed over to a police constable who happened to arrive at the place. R.W. 36 and the police constable then proceeded towards the Pahar Ganj Police Station followed by a crowd which continued to swell on the way. Polling Station No. 11 lay on the way to the police station. A report about the incident was duly recorded in the police diary at the instance of R.W. 36. The petitioner's allegation is that the currency notes belonged to the respondent himself and he had fabricated the Jagan Nath's story with a view to prejudice the prospects of election of the petitioner. The Tribunal is not in a position on the material before it to give a finding as to whether the version of the incident given by R.W. 36 is or is not correct. On the date in question the respondent's version apparently held the field whether true or other-wise. The respondent had personally complained to the Supdt. of Police about the matter, and it is nowhere shown that the petitioner had told any officer the same day that the respondent's story was

a fabrication. Whatever the facts, unless the Tribunal can find that the currency notes belonged to the respondent himself and the whole story had been fabricated, any dislocation of work occasioned by the crowd must be held to be accidental.

It will thus be seen that the root cause of the troubles was the unfortunate choice of the polling station, and the immediate cause in the morning was the arrogant behaviour of the petitioner and in the evening the incident about recovery of currency notes. If the respondent had intended to create trouble, the last place he would have thought of in this connection would have been polling station No. 11, which is just opposite police station, Pahar Ganj at a distance of only 25 or thirty yards. No candidate in his senses would have taken the risk of provoking the forces of law and order at this particular station. In spite of the trouble both in the morning and in the afternoon polling had been quite heavy. There is also surprisingly little evidence of alleged interference with the voters at this polling station. When P.W. 2, the Magistrate on duty, rang up the Deputy Commissioner it was merely due to the presence of large crowds. He has not deposed to the commission of any illegal act by the crowd. The A.D.M. and S. P. who responded to the call of P.W. 2 merely dispersed the crowd and have not deposed to any particular act of the crowd or a section thereof, which might bring the case within the mischief of section 123(2) of the Act. The petitioner must, therefore, be held to have failed to establish that the respondent had been guilty of the corrupt practice of undue influence at this station.

Polling Station No. 12.—Beyond certain general statements made by a number of P.Ws. about their not having been able to cast their votes at this station due to activities of the respondent's agents and which statements will be considered hereafter, the evidence with regard to the state of affairs at this station relates principally to the incident in which Amar Nath (R.W. 11) had been assaulted and injured. According to Dr. Saroj Dutt (R.W. 39) the Presiding Officer of this polling station, nothing particular had occurred at that station till about 2 or 3 in the afternoon. At that hour the witness had found the petitioner running towards the room of the witness for protection followed by an angry crowd. The witness, however, advised the petitioner to leave the polling station so as to avoid complications. At that moment the witness found a young man bleeding from his forehead. This young man was supporting himself on the shoulder of a boy, who was holding a camera in his hand. The witness appealed to the crowd to be calm and in the meantime sent his assistant (P.W. 40) to the police station for help. The police arrived a little later as also the Magistrate on duty Mr. Sharma (P.W. 1). Polling was suspended for twenty or twenty-five minutes. What had happened, according to the respondent, is that information had been brought to Amar Nath R.W. that a certain agent of the petitioner was distributing money to the voters. Amar Nath had a camera and he proceeded to the place to take a photograph. Information was in the meantime conveyed to the petitioner about the alleged intention of Amar Nath. The petitioner on arrival beat Amar Nath. This infuriated the crowd, who chased the petitioner and compelled him to seek protection in the Presiding Officer's room. No attack was actually made and the crowd dispersed at the request of the Presiding Officer even before the police arrived. S. P. Jagan Nath (R.W. 39) on arrival directed some police constables to escort the petitioner out of the polling station in question. This version of the incident is supported by Amar Nath. A report about the incident was also recorded the same day at the police station, Pahar Ganj at the instance of S. Bhagat Singh (P.W. 6), Inspector of Police. The petitioner in his statement denied all knowledge of the incident but there can be no manner of doubt that Amar Nath had come to be injured at the hands of the petitioner or one or more of his workers while engaged in some task distasteful to the petitioner. The trouble at this polling station had thus arisen because of the attack on Amar Nath, and but for which there would have been no occasion for the crowd to behave as it did. The crowd was of course not entitled to attempt to take the law in its own hands, but the question for consideration is not as to whether the crowd was justified in doing what it did or what it intended to do but as to whether, having regard to the sequence of events, the respondent could be held responsible for the situation as it had developed. As the statement of the Presiding Officer shows the petitioner had visited that particular polling station two or three times before the hour of the incident referred to above. No complaint had on the occasion of these visits been made to the Presiding Officer about the activities of the agents and workers of the respondent. If, as alleged by the petitioner, the crowd was there with a view to create trouble, it would not have remained inactive upto that hour. The trouble, therefore, at this polling station was essentially of petitioner's own seeking.

Direct evidence of interference with the voters by the respondent or his agents and workers has been given by P.Ws. 28, 31, 32, 33, 36, 43, 44, 95, 104, 105, 107 and 108. All these are persons of no substance and their evidence can carry little or no weight. P.W. 28 is a tailor, P.Ws. 31, 32, 33 and 36 are ballast makers. P.W. 43 is a cooly, P.W. 95 is a sweeper, P.W. 104 is a motor driver, P.W. 105 is a labourer, P.W. 107 is a petty railway employee and P.W. 108 is a chaprasi. All these witnesses could be easily procured. Moreover, most of them state that they became frightened on seeing disturbances taking place and few have deposed to any overt act of interference. The surprising part about the statements of some of these witnesses is that while the wives and female relations of these witnesses had been able to cast their votes, their husbands and relations are not alleged to have been able to do so. The petitioner's explanation is that the workers of the respondent had specific instructions not to harass the female voters because that might lead to trouble. This explanation is neither adequate nor convincing. What the law requires is that a man of ordinary nerve and courage must be proved to have been prevented from going to the poll but if some timid voters do not exercise their franchise because of rush of voters or due to some casual incident not suggesting the existence of any plan to intimidate the voters generally, the election cannot be avoided. The petitioner must, therefore, be held to have failed to establish any instance of undue influence at this polling station as well.

Polling Station No. 9.—This station had originally been located in the house of one Rana Kundan Lal. The house had caught fire a day before the date of polling and consequently a number of tents had been pitched in the street, adjacent to the house to serve as polling station. Shri Behari Lal (R.W. 41) was the Presiding Officer at this station and he is the only official witness so far as this polling station is concerned. According to this witness polling went on smoothly throughout the day. The witness had never been told by the petitioner or any of his agents that the voters were being molested or prevented from casting their votes. The petitioner has nevertheless produced sixteen witnesses to depose that there had been interference with the free exercise by the voters of their right to vote in favour of the candidate of their choice. I have already referred while considering the evidence in respect of disturbances at polling station No. 11 to the Jagan Nath incident. Jagan Nath is in fact the principal witness about the trouble at this polling station. Jagan Nath has stated that on the polling day he had been beaten near the camp of the petitioner at 3 p.m. He was at that time remonstrating with the respondent's workers who were preventing the voters of the petitioner from voting for him. The witness has stated that he had become unconscious and had remained so for six hours. The witness had, however, received no injury and no report had been made to the police. The respondent's version of the affair has already been given. The point for determination is not as to whether Jagan Nath, admittedly a worker of the petitioner, had been proved to have been distributing money to the voters but as to whether he had been attacked by the workers of the respondent for daring to remonstrate with them for their unlawful activities. Excepting the statement of P.W. 49, a *thela* driver, and one or two others, there is nothing to show that Jagan Nath had been attacked. The various witnesses produced by the petitioner belong to the same class as the witnesses produced in support of the allegations regarding interference with the voters at polling station No. 12. P.W. 49, as noticed already, is a *thela* driver. P.W. 56 is a *kabaria*, P.W. 57 is a moulder, P.W. 63 a book binder and P.W. 65 an *attar*, P.W. 67 a *jamadar*, P.Ws. 69 and 96 blacksmiths, P.Ws. 106 and 122 sweepers, P.W. 126 a vegetable seller and P.W. 129 is a labourer. Not a single respectable witness has been produced by the petitioner to prove that he had been prevented from voting or had seen others being so prevented. The evidence produced is singularly unconvincing. The finding, therefore, in respect of this polling station, must also be the same as in case of polling stations Nos. 11 and 12.

Polling Station No. 10.—The respondent has produced Shri N. N. Sood (R.W. 34) with regard to the circumstances in which polling took place at this particular station. Mr. Chakraverty the Presiding Officer could not be produced as he was no longer posted at Delhi. According to the witness polling went on very smoothly at this particular polling station and there was no disturbance. There was, however, a good deal of noise in the afternoon when there was a rush of work. The witness had not seen any voter being threatened or pushed out of the queue or otherwise molested. The noise according to the witness was due to the large number of people who were present but these were not shouting any slogans. This particular station is at the back of polling station No. 11 and the big crowd that had collected was after the Jagan Nath incident near polling station No. 9 referred to above.

The petitioner has, however, produced no less than 28 witnesses to establish that his voters had been intimidated by the workers and supporters of the respondent. It is unnecessary to examine the individual statements of these witnesses. They also all belong to the same class to which the P.Ws. whose statements have already been referred to, belong. P.Ws. 22, 23, 27, 77, 79, 81, 86 and 89 are *khastati* makers. P.W. 48 is a *Chamar*, P.W. 78 is a *chick* maker, P.Ws. 76, 76, 80, 82, 83, 84, and 85 are *Mails*. Of the others one is a *thela* driver the other a goldsmith, and the third is a carpenter and one is a petty contractor. It would be most unsafe to place any reliance on the statements of witnesses of this type. If there had been any trouble at all it must have been caused by the crowds in the afternoon. It was urged on behalf of the petitioner that since the voters in this constituency belong generally to the labour class, it was only people of this class who could be produced to depose about the events of the day and it would not be fair to reject their testimony simply because they belong to a lower strata of society. It is not simply because of the class to which the witnesses belong that the Tribunal is unable to rely upon their statements. Their statements can be believed only if the Tribunal is of the view that the police was not only passive but was an active supporter of the respondent. Further not one person of status had appeared as an eye witness of the alleged illegal acts of the workers of the respondent. The only official witness produced has deposed to peaceful polling at the station in question. The charge, therefore, of undue influence at the election by the respondent or his workers at this station also is not established.

Polling Stations Nos. 13, 14 & 15.—Some of the petitioner's witnesses have in general terms spoken of interference with the voters at the *Lakar Mandi* polling stations but have not mentioned any particular polling station. Shri P. B. Bagchi, Presiding Officer at polling station No. 15 has been produced by the respondent and his statement shows that polling was very smooth at that particular station. There could be no more eloquent testimony of the fact that there had been no interference with the voters at polling stations No. 14 and 15 than the figures of votes polled by either candidate. These stations were located in the same building and a temporary partition divided station No. 14 from station No. 15. The undue influence to which the voters could be subjected must have been the same at both these stations and yet the votes polled by the petitioner at station No. 14 were 307 against 349 of the respondent, while that at the adjacent polling station No. 15 the petitioner had polled 302 votes as against 191 only for the respondent. This considerable disparity in the figures of votes polled shows that the voters were in a position to exercise their franchise freely and no undue influence of any kind had been exercised.

Polling Station No. 16.—So far as this polling station is concerned, the respondent has produced Shri P. B. Mathur (R.W. 35) Polling Officer and Shri C. L. Ahuja (R.W. 44), the Presiding Officer. Mr. Ahuja has deposed that there was no rowdiness, there was only noise here and there due to the excitement of the election. There was no complaint throughout the day that anybody had been prevented from voting in the way he desired. R.W. 35 has also deposed that during the day he went out of his room a number of times to see if things were going on smoothly. The witness had found the queue always in order and had noticed that the voters were neither being molested nor pushed nor threatened.

As against the above official witnesses, the evidence on the petitioner's side consists of the statements of P.Ws. 54, 55, 91, 97, 102, 113, 116 and 133. P.W. 54 is a *jullaha*, P.W. 55 is a mason, P.W. 91 is a blacksmith, P.Ws. 97 and 102 are carpenters, P.W. 115 is a packer in the post office and was a worker of the petitioner, and P.W. 133 is a painter. Most of these have deposed that on going to the polling station they found disturbances going on and they had accordingly returned without casting their votes. P.W. 116 Labha Mal a shop-keeper has, however, stated that on one of the voters protesting against interference by the supporters of the respondent, the voter in question had been given fist blows. The injured person has not been produced. The witness was working as polling agent for another candidate in a different constituency and in all probability had not visited this polling station throughout the day. For reasons similar to those given in respect of other witnesses of this class, the testimony of the various P.Ws. referred to above must be rejected as entirely worthless. At this polling station as many 778 out of a total of 1104 voters had voted giving a percentage of 70.46. The above figures do not support the allegation of the petitioner that there had been any interference with the voters as a result of which they had not been able to exercise their right of franchise.

In discussing the state of affairs at the various polling stations, we have confined ourselves to discussing the conduct of the crowd as a whole without going into the question as to whether even if the crowd was proved to have acted in

any manner contrary to law, the fault could be laid at the door of the respondent. It is not sufficient in law to prove that undue influence had been exercised; it must further be shown that the returned candidate or his agent was responsible for the same, or in any case, that the act had been committed with their connivance. This has always to be established by cogent evidence. A mere possibility or suspicion that the offending acts may have been committed by the respondent's agents or workers is not sufficient. Direct connection must be established between the act complained of and a particular worker or agent of the returned candidate. The petitioner has in this case been mostly concerned with establishing that the crowds had acted in what according to him was an objectionable manner, but excepting in few cases the witnesses have failed to name any particular worker or workers of the respondent. In cases where this has been done, the evidence consists of the statements of persons of low status or of partisans. Under section 131 disorderly conduct in or near a polling station is an offence and a Presiding Officer is entitled to direct a police officer to arrest a person guilty of such conduct. If hundreds of people had at the instigation of the respondent or his workers indulged in disorderly behaviour as alleged by the petitioner, it is inconceivable that the authorities should not have taken cognizance thereof and arrested the offenders. The only case in which an arrest was made was when a supporter of the petitioner was involved in the breach of peace. P.W. 21 has admitted that he had been hand-cuffed and sent to the police station where a case under sections 107/151 I.P.C. was started against the witness. It was no answer to the above argument that the officers were anxious to win credit for conducting the election in a most peaceful manner. Moreover, the crowd of several thousands could not all have consisted of the workers and agents of the respondent. There were persons in the Congress Camp also, who were bitterly opposed to the choice of the petitioner as a candidate as is evident from posters Ex. P/C, P/D and P/E, and these must also have been those who without being supporters of the respondent nevertheless did not wish the petitioner well.

For all the above reasons issue No. 6 is decided against the petitioner.

Issues Nos. 7 and 8.—The issue as it stands makes no mention of the rumour about the arrest of the petitioner. This appears to be due to oversight and it was all along understood that the matter was in issue. The petitioner had been allowed to lead evidence on the matter of arrest without any objection and this aspect of the case must be considered even on the issue as it stands.

The petitioner's case is that from the very beginning, that is, soon after polling had begun the respondent and his workers had started giving currency to the rumour that the petitioner had been arrested, the object obviously being to prevent the voters from voting in his favour and thus prejudicing his prospects of election. The respondent denies that any such rumour had been floated by him or to his knowledge by any other person. It is, however, suggested that if any such rumour obtained currency, it must have been after the incident at polling station No. 12, when the petitioner had to leave the place under police escort. This, it was urged, might have given rise to a rumour that the petitioner had been arrested. The petitioner, however, referred to the statement of the A.D.M. (P.W. 3) and the Deputy Commissioner (P.W. 5) to show that the rumour had gained currency as early as 1 P.M. long before the incident at polling station No. 12. The witnesses had given the hour from memory and could obviously not be certain whether the rumour had reached them at 1 or 1-30 P.M. or an hour or two later. The statement of the S. P. (P.W. 39) shows that the Deputy Commissioner had made enquiries from the witness about the reported arrest of the petitioner after the incident at polling station No. 12. The petitioner has also stated that he came to know of the rumour about his arrest at about 3 P.M. There was thus no sure foundation for the conclusion that the rumour about the arrest of the petitioner had obtained currency even before the incident at polling station No. 12. The rumour obviously got currency after the petitioner had been escorted by the police following the assault on photographer Amar Nath. It is of course not possible to determine whether the rumour had spread because somebody genuinely believed that the petitioner had been arrested or was a mischievous invention of the respondent or his workers, following the above incident. One of the petitioner's witnesses viz. P.W. 47 has stated that he himself after seeing that the petitioner was being escorted by a number of police constables had got the impression that the petitioner had been arrested and this impression was shared by many other persons. The statements of some P.Ws. that some workers of the respondent were found giving currency to the above news cannot, even if true, help the petitioner because it is not possible, in the circumstances of the case, to conclude that the workers were making the statement knowing the same to be false or not believing the same to be true. They may have also been under the same impression as P.W. 47.

So far as the rumour regarding killing is concerned, Inspector Bhagat Singh (P.W. 6) is the only official witness. The witnesses other than S. Bhagat Singh who have deposed about this matter are P.Ws. 12, 13, 17, 19, 21, 22, 23, 24, 26, 27, 33, 38, 42, 43, 50, 54, 55 and 97. The statements of most of these witnesses have already been discussed under issue No. 6, for they have deposed not merely to hearing the rumour in question but also about exercise of undue influence in other respects. Their statements, therefore, could not be believed. The alleged death by accident or otherwise of the petitioner was a more serious item of news than his arrest and it is surprising that while the rumour about the petitioner's arrest reached the Deputy Commissioner and other high officers, that about his reported death had never reached them. The press had made enquiries from P.W. 2 about the reported arrest of the petitioner but no enquiries had been made about his reported death. The solitary statement of P. W. 6 is in the circumstances not sufficient to establish that any such rumour had been floated. S. Bhagat Singh may possibly have misunderstood the purport of what he had heard. In any case, there is no reliable evidence to establish that the rumour had been spread by the workers of the respondent. Issue No. 7 must, therefore, be decided against the petitioner.

In consideration of the findings given above it is not necessary to discuss the legal aspect of the matter, that is, as to whether a false statement about the arrest or death of a candidate is a statement in relation to the candidature or withdrawal of a candidate within the meaning of section 123(5) of the Representation of People Act.

Issue No. 14.—As a result of the findings arrived at above, the petition is dismissed. The petitioner must pay the costs of the respondent No. 1, which we assess at Rs. 250 (Rupees two hundred and fifty only).

Announced

The 28th November, 1953.

(Sd.) DURGA PERSHAD NAIR, *Member.*

(Sd.) R. B. PURSHOTAM LAL, *Member.*

(Sd.) GURDEV SINGH, *Chairman.*

[No. 19/201/52-Elec.III/7980.]

By Order,

P. R. KRISHNAMURTHY, *Asstt. Secy.*

